

GUIDANCE IN THE PREPARATION OF A NOTICE OF AN INVOLUNTARY TRANSFER OR DISCHARGE

What Constitutes a Transfer?

The term Transfer means the movement of a resident (patient) from one licensed facility to another or in certain situations, movement from one certified distinct part of a facility to another certified distinct part of the same facility.

What Constitutes a Discharge?

The term Discharge means the movement of a resident out of a licensed facility regardless of the resident's destination.

What laws pertain to involuntary transfer or discharge of residents from a nursing home?

A resident has the right to stay in a licensed facility or the distinct part of the facility except under certain situations specified below. Even in those situations, residents have the right to challenge the facility's proposal for a transfer or discharge through processes spelled out in state and federal law.

The facility must give the resident at least a 30-day written notice (*Section 21773 of P.A. 137 of 2001*) before a resident is involuntarily transferred or discharged. The notice must state the intention to transfer or discharge a resident and notify the resident that he/she has the right to appeal that action. In addition, the facility must inform and prepare a resident for transfer or discharge as required by *Part 217 of the Public Health Code, Sections MCL 333.21773-MCL 333.21776*, as amended. An involuntary transfer or discharge plan must be completed and approved by the Department before transfer/discharge. The plan may be submitted for Department approval with a copy of the *Notice of an Involuntary Transfer or Discharge*.

Section 21773, P. A. 137 of 2001:

Sec. 21773.(1) A nursing home shall not involuntarily transfer or discharge a patient except for one or more of the following purposes:

- (a) Medical reasons.
- (b) The patient's welfare.
- (c) The welfare of other patients or nursing home employees.
- (d) Nonpayment for the patient's stay, except as prohibited by title XIX of the *Social Security Act*, Chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396r-6 and 1396r-8 to 1396v.

- (2) A licensed nursing home shall provide written notice at least 30 days before a patient is involuntarily transferred or discharged. The 30-day requirement of this subsection does not apply in any of the following instances:
 - (a) If an emergency transfer or discharge is mandated by the patient's health care needs and is in accord with the written orders and medical justification of the attending physician.
 - (b) If the transfer or discharge is mandated by the physical safety of other patients and nursing home employees as documented in the clinical record.
 - (c) If the transfer or discharge is subsequently agreed to by the patient or the patient's legal guardian, and notification is given to the next of kin and the person or agency responsible for the patient's placement, maintenance, and care in the nursing home.
- (3) The notice required by subsection (2) shall be on a form prescribed by the Michigan Department of Licensing and Regulatory Affairs and shall contain all of the following:
 - (a) The stated reason for the proposed transfer.
 - (b) The effective date of the proposed transfer.
 - (c) A statement in not less than 12-point type that reads: "You have a right to appeal the nursing home's decision to transfer you. If you think you should not have to leave this facility, you may file a request for a hearing with the Michigan Department of Licensing and Regulatory Affairs within 10 days after receiving this notice. If you request a hearing, it will be held at least seven (7) days after your request, and you will not be transferred during that time. If you lose the hearing, you will not be transferred until at least 30 days after you received the original notice of the discharge or transfer." A form to appeal the nursing home's decision and to request a hearing is attached. If you have any questions, call the Michigan Department of Licensing and Regulatory Affairs at the number listed below.
 - (d) A hearing request form, together with a postage paid, preaddressed envelope to the Michigan Department of Licensing and Regulatory Affairs.
 - (e) The name, address, and telephone number of the responsible official in the Michigan Department of Licensing and Regulatory Affairs.
 - (f) The location to which the resident is transferred or discharged.

- (g) The name, address and telephone number of the State long term care ombudsman.
- (4) A request for a hearing made under subsection (3) shall stay a transfer pending a hearing or appeal decision.
- (5) A copy of the notice required by subsection (3) shall be placed in the patient's clinical record and a copy shall be transmitted to the Michigan Department of Licensing and Regulatory Affairs, the patient, the patient's next of kin, patient's representative, or legal guardian, and the person or agency responsible for the patient's placement, maintenance, and care in the nursing home.
- (6) If the basis for an involuntary transfer or discharge is the result of a negative action by the Michigan Department of Licensing and Regulatory Affairs with respect to a Medicaid client and a hearing request is filed with that Department, the 21-day written notice period of subsection (2) does not begin until a final decision in the matter is rendered by the Michigan Department of Licensing and Regulatory Affairs or a court of competent jurisdiction and notice of that final decision is received by the patient and the nursing home.
- (7) If nonpayment is the basis for involuntary transfer or discharge, the patient may redeem up to the date that the discharge or transfer is to be made and then may remain in the nursing home.
- (8) The nursing home administrator or other appropriate nursing home employee designated by the nursing home administrator shall discuss an involuntary transfer or discharge with the patient, the patient's next of kin or legal guardian, and person or agency responsible for the patient's placement, maintenance, and care in the nursing home. The discussion shall include an explanation of the reason for the involuntary transfer or discharge. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made a part of the patient's clinical record.
- (9) The nursing home shall provide the patient with counseling services before the involuntary transfer or discharge and the Department shall assure that counseling services are available after the involuntary transfer or discharge to minimize the possible adverse effect of the involuntary transfer or discharge.
- (10) If a nursing home voluntarily withdraws from participation in the State plan for Medicaid funding, but continues to provide services, the nursing home shall not, except as provided in subsection (1), involuntarily transfer or discharge a patient, whether or not the patient is eligible for Medicaid benefits, who resided in the nursing home on the day before the effective date of the nursing home's withdrawal from participation. The prohibition against transfer or

discharge imposed by this subsection continues unless the patient falls within one (1) or more of the exceptions described in subsection (1).

(11) If an individual becomes a resident of a nursing home after the date the nursing home withdraws from participation in the state plan for Medicaid funding, the nursing home, on or before the date the individual signs a contract with the nursing home, shall provide to the patient oral and written notice of both of the following:

- (a) That the nursing home is not participating in the state plan for Medicaid funding.
- (b) That the facility may involuntarily transfer or discharge the patient for nonpayment under subsection (1)(d) even if the patient is eligible for Medicaid benefits.

Section 21776:

- ◆ A facility, with the approval of the Department, shall develop a plan to effectuate the orderly and safe transfer or discharge of a resident.
- ◆ The resident and resident's family or representative shall be consulted in choosing another facility.
- ◆ The resident shall receive counseling services before the move to minimize the adverse effects of transfer trauma.
- ◆ The Department shall assure that counseling is available if the resident requires counseling after transfer or discharge.

Administrative Rule R 325.20116:

- ◆ The facility and the Department shall assure that counseling mandated in Section 21773(9) of the Public Health Code is provided.
- ◆ The Department shall monitor counseling of residents who are involuntarily transferred or discharged utilizing appropriate members of the Department's staff. These staff, as part of the monitoring activity, shall be responsible for approving a facility plan to effectuate the orderly and safe transfer or discharge of a resident.
- ◆ It shall be the objective of a transfer or discharge plan to assure all of the following:
 - ✧ The proposed new placement is appropriate for the resident's needs and considers the recommendations of the attending physician.

- ✧ The optimum placement is made, insofar as possible, the first time to avoid the necessity for additional transfers at a later date.
- ✧ The resident or the next of kin, guardian, designated representative, agency, or organization responsible for placing and maintaining the resident in a facility is involved in the choice of the facility to which the resident is to be transferred.
- ◆ That at least one counseling session is provided for each involuntarily transferred or discharged resident.
- ◆ The resident shall have the opportunity to visit the proposed new placement at least once. The visit to the new site may only be waived if the attending physician documents in the resident's clinical record that such a visit are medically contraindicated or if the resident, guardian, or resident representative determines, in writing, that the visit is not in the resident's best interest. In such instances, the resident shall receive appropriate information, such as floor plans, brochures, pictures, and other documents, to familiarize the resident with the new facility.
- ◆ A family member or other appropriate person is available to accompany the resident on the involuntary transfer or discharge from the home to a new placement, unless the resident requests otherwise.
- ◆ Counseling in the new placement is provided following transfer or discharge and that counseling occurs within 72 hours following the transfer or discharge.

A resident may not be transferred or discharged until the requirements of Section 21773, 21776 and Rule 325.20116 are met and the transfer plan is completed and approved by the Department.

The attached sample, *Facility Involuntary Transfer/Discharge Plan Checklist* (BHCS-LTC-512), or equivalent may be used to document the transfer plan. The plan may be submitted to the Department with the *Notice of Involuntary Transfer or Discharge* carbon copy. Questions regarding this procedure may be submitted in writing to the address indicated or by calling the Manager of the Complaint Investigation Unit at (517) 241-4712. Submit documentation of the plan to:

Michigan Department of Licensing and Regulatory Affairs
Bureau of Health Care Services
Long Term Care Division
P.O. Box 30664
Lansing, MI 48909

Please notify the Department if the transfer/discharge is canceled or if the resident voluntarily agrees to a discharge or transfer to another facility.

Under What Circumstances May a Facility Involuntarily Transfer or Discharge a Resident?

NOTE: *The requirements under state and federal regulations which are applicable to most circumstances are summarized below.*

A facility may transfer or discharge a resident in the following events:

- a. Necessary for the resident's welfare, when the facility cannot meet the resident's (non-urgent) needs.
- b. Resident's health has improved to no longer require the facility's services.
- c. The physical safety of the resident or other residents and facility employees is endangered.
- d. The health of any individuals in the facility, including this resident, would otherwise be endangered.
- e. Nonpayment:

NOTE: *a transfer may not be initiated for nonpayment when:*

- ◆ A resident loses his/her Medicare or other insurance coverage unless that third party payment has stopped, the resident has been billed, and the resident has failed to make timely payment.
- ◆ If a resident has submitted appropriate paperwork to a third party payer and is waiting for a response to the claim.
- ◆ A nursing home voluntarily withdraws from participation in the state plan for Medicaid funding, whether or not the resident is eligible for Medicaid benefits, and the resident resided in the nursing home on the day before the effective date of the nursing home's withdrawal from participation.
- ◆ If an individual becomes a patient of a nursing home after the date the nursing home withdraws from participation in the state plan for Medicaid funding, the nursing home, on or before the date the individual signs a contract with the nursing home, shall provide to the patient oral and written notice of both of the following:
 - ✧ That the nursing home is not participating in the state plan for Medicaid funding.

- ✧ That the facility may involuntarily transfer or discharge the patient for nonpayment under subsection (1)(d) even if the patient is eligible for Medicaid benefits.

- f. The facility ceases to operate.
- g. An emergency transfer or discharge is mandated by the patient's health (urgent) needs.
- h. The transfer or discharge is agreed to by the resident or resident's legal guardian.

See for reference:

Part 217 of the Public Health Code, Section MCL 333.21773
Administrative Rule 325.20116
42 CFR 483.12
Public Act 137 of 2001